

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA.

Case No. 2:12-cr-00145-MMD-GWF

v

Plaintiff.

ORDER

RYAN MASTERS,

Defendant.

12 Defendant Ryan Masters filed a motion to vacate or set aside a sentence pursuant
13 to 28 U.S.C. § 2255 (“Motion”), which was stayed pending Masters’ direct appeal. (ECF
14 No. 386, 394.) After the stay was lifted, the Court directed the government to respond to
15 the Motion. (ECF No. 416.) In response, the government filed an application for an order
16 deeming the attorney-client privilege waived (“Application”). (ECF No. 422.) The time to
17 respond has expired and Masters has not opposed.

18 It is well established that “where a habeas petitioner raises a claim of ineffective
19 assistance of counsel, he waives the attorney-client privilege as to all communications
20 with his allegedly ineffective lawyer.” *Bittaker v. Woodford*, 331 F.3d 715, 716 (9th Cir.
21 2003) (en banc). “The defendant impliedly waives his attorney-client privilege the moment
22 he files a habeas petition alleging ineffective assistance of counsel.” *Lambright v. Ryan*,
23 698 F.3d 808, 818 (9th Cir. 2012) (citing *Bittaker*, 331 F.3d at 716). This rule, which has
24 been identified as “the fairness principle,” ensures that “parties in litigation may not abuse
25 the privilege by asserting claims the opposing party cannot adequately dispute unless it
26 has access to the privileged materials.” *Bittaker*, 331 F.3d at 719. The waiver of the
27 attorney-client privilege, however, is limited to the adjudication of the ineffective
28 assistance of counsel claim in the federal habeas case. See *Bittaker*, 331 F.3d at 727-28.

1 (“[D]istrict courts have the obligation, whenever they permit discovery of attorney-client
2 materials as relevant to the defense of ineffective assistance of counsel claims in habeas
3 cases, to ensure that the party given such access does not disclose these materials,
4 except to the extent necessary in the habeas proceeding, i.e., to ensure that such a
5 party's actions do not result in a rupture of the privilege.”)

6 In his Motion, Masters asserts claims of ineffective assistance of counsel, claiming
7 that his former trial counsel, Chris Rasmussen, was ineffective for failing to undertake
8 certain actions or address certain issues. (ECF No. 386.) The government argues that
9 Masters has waived his attorney-client privilege by raising these claims. (ECF No. 422 at
10 2-3.) The government asks the Court to declare that the attorney-client privilege has been
11 waived and to order Mr. Rasmussen to respond to specific requests relating to Masters'
12 allegations of ineffective assistance of counsel to permit the government to address the
13 Motion. (*Id.* at 4-6.) The Court finds that the government has properly narrowed the scope
14 of its waiver request and Masters has waived the attorney-client privilege with respect to
15 the subject areas identified in the government's Application. However, Masters' waiver is
16 limited to this habeas case. The Court will grant the government's Application.

17 It is therefore ordered that the government's application for an order deeming the
18 attorney-client privilege waived (ECF No. 422) is granted. Mr. Rasmussen is directed to
19 provide the government an affidavit responding to the requests presented in the
20 government's Application within thirty (30) days. The government will serve a copy on
21 Masters within five (5) days from receipt of Mr. Rasmussen's affidavit.

22 It is further ordered that the government has forty-five (45) days from receipt of Mr.
23 Rasmussen's affidavit to respond to Master's Motion.

24 DATED THIS 31st day of October 2017.



25 MIRANDA M. DU
26 UNITED STATES DISTRICT JUDGE
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